

ExpeditedFILED - USDC - NH  
2025 JUN 30 AM 11:53

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEW HAMPSHIRE  
 Frank Staples and Kathleen Bussiere,  
 Plaintiffs,  
 v.  
 Kelly Ayotte, Christopher Sununu, John Formella, and Charles O'Leary,  
 Defendants.  
 Case No.: 1:24-cv-00331-LM-TSM

EMERGENCY ADDENDUM TO MOTION FOR ENTRY OF DEFAULT (DOC 57)  
 Filed June 30, 2025

#### I. INTRODUCTION AND URGENCY

This Emergency Addendum supports Plaintiffs' pending Motion for Default (Document 57) with newly discovered evidence establishing defendants' systematic procedural manipulation across two identical cycles spanning six months, requiring immediate judicial intervention under Federal Rule 55(a).

##### Urgency and Timing

Defendants are now twenty days past the June 10, 2025 deadline established by this Court's bifurcation order (Document 53) for filing substantive responsive pleadings to the First Amended Complaint. Despite this clear violation, defendants filed their Motion to Dismiss today (June 30, 2025) only after seeing Plaintiffs' default motion (Document 57), confirming their pattern of reactive manipulation rather than diligent compliance.

##### Critical New Evidence Discovered

###### 1. Document 12 Contradictory Admissions (January 2025)

Defendants explicitly stated: "Nothing in Rule 4 precludes a defendant who has become aware of a lawsuit from waiving service regardless of whether a plaintiff has made a formal request." This judicial admission directly contradicts their June 2025 coordination demands and destroys their standing arguments.

###### 2. Same-Day Coordinated Filings (February 18, 2025)

Documents 22 and 23 (Motions to Dismiss) were filed at:

- 2:14 PM: State Defendants' Motion (Document 22)
- 2:16 PM: O'Leary's Motion (Document 23)

This 2-minute separation proves defendants had perfect coordination ability while falsely claiming consolidation was impossible to obtain prior extensions.

### 3. Post-Default Bribery Attempt (June 26-27, 2025)

Following Plaintiffs' default motion filing, DOJ emailed offering to extend deadlines for unserved defendants they lack standing to represent, demonstrating continued bad faith manipulation.

### 4. Immunity-Only Defense Strategy

Analysis of Documents 22-1 and 23-1 reveals defendants relied exclusively on procedural immunity defenses (Eleventh Amendment, qualified immunity, prosecutorial immunity) rather than addressing factual allegations, violating the Bass v. Hoagland standard for "otherwise defending."

#### Legal Framework Mandating Default

##### Federal Rule 55(a) Ministerial Duty

> "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

This language is mandatory, not discretionary. The 20-day violation is undisputed.

##### 76-Year Bass v. Hoagland Standard

The foundational precedent Bass v. Hoagland, 172 F.2d 205, 210 (5th Cir. 1949), established that "otherwise defend" requires substantive merits responses, not procedural immunity arguments that avoid factual adjudication.

##### Your Honor's Aho Precedent

In Aho v. Deutsche Bank National Trust Co., No. 1:23-cv-00454-JL-TSM (D.N.H. 2024), this Court established defendants must file both:

1. Timely motion to extend deadlines, AND
2. Timely substantive motion to dismiss

Defendants satisfied only the first prong (Document 55) while filing their motion to dismiss 20 days late.

#### Pattern of Systematic Abuse

This represents the second identical manipulation cycle in six months:

##### December 2024-January 2025 Cycle:

- Self-initiated service waivers (Documents 6-7) violating Rule 4(d)
- False consolidation necessity claims (Document 8)
- Same-day separate filings contradicting consolidation claims
- Court's January 13, 2025 leniency immediately exploited

**June 2025 Cycle:**

- Missed June 10 deadline with no substantive response
- False "no assent" claims (Document 55)
- Bribery attempt for unrepresented parties
- Reactive filing only after default motion

**Standing Violations**

This Court's bifurcation order (Document 53) created legally distinct procedural tracks for existing and new defendants. Defendants' attempts to coordinate their deadline obligations with unserved parties they do not represent violates fundamental federal third-party standing doctrine.

**Rule 11(b)(3) Sanctions Foundation**

Defendants' pattern of false factual contentions in Documents 8 and 55, contradicted by:

- Their own Document 12 admissions
- Same-day filing coordination ability
- June 26 email record
- Documentary evidence establishing knowing misrepresentations

**Relief Requested**

Plaintiffs respectfully request this Court:

1. Order immediate entry of default under Rule 55(a) against all defendants based on their 20-day violation and failure to "otherwise defend" under controlling precedent;
2. Issue show cause order for Rule 11(b)(3) sanctions for systematic false factual contentions and procedural abuse spanning two identical manipulation cycles;
3. Enter case management orders prohibiting future coordination excuses based on unrepresented parties defendants lack standing to coordinate;
4. Grant all other relief the Court deems just and proper.

The integrity of federal judicial procedures demands that sophisticated government counsel comply with the same deadlines governing all litigants. Default entry is not only appropriate but mandatory under Rule 55(a)'s clear language and 76 years of consistent precedent.

**II. STATEMENT OF NEWLY DISCOVERED FACTS**

This section presents critical evidence unavailable when Plaintiffs filed Document 57, establishing defendants' systematic procedural manipulation and providing the factual foundation for mandatory default entry and Rule 11(b)(3) sanctions.

#### A. Document 12: Defendants' Contradictory Judicial Admissions (January 2025)

In their January 2025 objection to Plaintiffs' first expedited motion for default, defendants made the following unequivocal statement:

> "Nothing in Rule 4 precludes a defendant who has become aware of a lawsuit from waiving service regardless of whether a plaintiff has made a formal request."

**Legal Significance of This Admission:**

1. Destroys standing arguments: Defendants acknowledged they can act unilaterally on service matters without plaintiff coordination
2. Contradicts June 2025 position: Their sudden demand for plaintiff "assent" directly violates their own prior legal position
3. Establishes judicial admission: This statement binds defendants and cannot be retracted for tactical advantage
4. Proves knowing deception: The June 2025 "no assent" crisis was manufactured, not legitimate procedural concern

#### B. Same-Day Coordinated Separate Filings: February 18, 2025

**Irrefutable Evidence of Coordination Ability:**

On February 18, 2025, defendants demonstrated perfect coordination by filing separate Motions to Dismiss within 2 minutes of each other:

- 2:14 PM EST: Document 22 - State Defendants' Motion to Dismiss filed by Shawna Bentley, Civil Bureau
- 2:16 PM EST: Document 23 - O'Leary's Motion to Dismiss filed by Christina Wilson, Public Safety Bureau

**Critical Facts Established:**

1. Perfect coordination capability: Two different attorneys from different bureaus filed simultaneously
2. Deliberate choice to file separately: Despite claiming consolidation was "necessary for efficiency"
3. False pretenses for extension: January 2025 extension obtained by claiming coordination was impossible
4. Immediate violation of representations: Filed separately on the exact deadline they claimed required consolidation

### C. Historical Context: The January 2025 Manipulation Cycle

#### Timeline of First Manipulation Cycle:

December 20, 2024: Defendants filed three strategic documents:

- Documents 6-7: Self-initiated service waivers without plaintiff request (violating Rule 4(d))
- Document 8: Extension request claiming consolidation necessity

December 27, 2024: Plaintiffs completed service and filed objection (Document 9) establishing:

- Service was complete, making coordination arguments moot
- No waiver requests were made by Plaintiffs
- Defendants' representations were false

January 13, 2025: Court's endorsed orders:

- Granted extension to February 18, 2025 based on defendants' false consolidation claims
- Denied Plaintiffs' expedited default motion as moot due to court's leniency

February 18, 2025: Immediate violation - Defendants filed separate motions on the exact deadline, proving:

- Consolidation was never needed
- Extensions were obtained under false pretenses
- Court's leniency was immediately exploited

### D. Analysis of Immunity-Focused Defense Strategy

Document 22-1 (State Defendants' Memorandum) - 17 pages focused on:

- Eleventh Amendment immunity (pages 4-5)
- Qualified immunity (pages 12-14)
- Statute of limitations (page 6)
- Zero engagement with factual timeline of procedural manipulation
- No dispute of Plaintiffs' evidence of false representations

Document 23-1 (O'Leary's Memorandum) - 8 pages focused on:

- Prosecutorial immunity (pages 3-4)
- Incorporation of State Defendants' immunity arguments (page 6)
- Single factual allegation addressed: Video evidence introduction at trial
- No substantive engagement with constitutional violation claims

#### Legal Significance Under Bass v. Hoagland:

These immunity-focused motions fail the 76-year standard requiring substantive merits responses. Pure immunity arguments are procedural shields that avoid factual adjudication, not "otherwise defending" under Rule 55(a).

### E. June 2025 Manipulation Cycle: Identical Pattern Repeated

May 20, 2025: Court's bifurcation order (Document 53) established:

- June 10, 2025 deadline for existing defendants to respond to First Amended Complaint
- Legally distinct procedural tracks for existing vs. new defendants

June 10, 2025: Deadline violation - Defendants filed only:

- Document 55: Motion to Extend Time (procedural motion)
- Document 56: Motion to Stay Discovery (procedural motion)
- No substantive responsive pleading addressing merits

Key False Representations in Document 55:

> "No assent has been provided"

Contradicted by contemporaneous evidence:

1. June 9 email chain: Frank Staples responded reasonably requesting "time to confer with Kathleen"
2. Document 12 admission: Defendants previously acknowledged they need no assent for coordination
3. Standing violation: Defendants lack authority to coordinate for unrepresented parties under bifurcation order

#### F. Post-Default Motion Bribery Attempt (June 26-27, 2025)

Timeline of Bad Faith Escalation:

June 26, 2025: Plaintiffs filed Motion for Default (Document 57)

June 26-27, 2025: DOJ contacted Plaintiffs offering to:

- Extend deadlines for unserved defendants
- Coordinate matters they lack legal authority to control
- Exchange procedural favors in response to default motion

Legal Violations:

1. Standing defect: Defendants cannot negotiate for parties they don't represent
2. Bifurcation violation: Document 53 created separate tracks that cannot be conflated
3. Bad faith negotiation: Offering unauthorized benefits in response to valid default motion
4. Rule 11 implications: Making representations about authority they don't possess

#### G. Current Reactive Filing Pattern (June 30, 2025)

Defendants' Motion to Dismiss filed today exhibits identical manipulation:

1. Twenty days late: Filed 20 days past June 10 deadline
2. Reactive timing: Filed only after seeing Plaintiffs' default motion

3. Aho test failure: Missing the "timely" requirement for substantive response
4. Pattern continuation: Replicates December 2024-January 2025 cycle exactly

#### H. Systematic Pattern Analysis

Two Identical Cycles of Manipulation:

Element	Cycle 1 (Dec 2024-Jan 2025)	Cycle 2 (June 2025)
Service Issues	Self-initiated waivers (Docs 6-7)	False coordination demands
False Claims	Consolidation necessity (Doc 8)	"No assent" provided (Doc 55)
Court Response	Extension granted, default denied	Pending motion for default
Violation Pattern	Same-day separate filings	20-day deadline violation
Evidence	Document 12 contradictions	June 9 email contradiction

#### I. Rule 11(b)(3) Factual Contentions Analysis

False Representations Established:

Document 8 (December 2024):

- Claimed consolidation necessity
- Contradicted by same-day separate filings (Docs 22-23)

Document 55 (June 2025):

- Claimed "no assent has been provided"
- Contradicted by June 9 email and Document 12 admissions

Standard Under Rule 11(b)(3):

> "Factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery."

Defendants' contentions are contradicted by contemporaneous documentary evidence and their own prior admissions.

#### J. Service Completion and Mootness Evidence

Critical Timeline:

- December 4, 2024: Service on Governor Sununu completed
- December 27, 2024: Service completed on all defendants before waiver requests
- Service was accomplished before defendants' coordination arguments, making their extension requests moot from inception

This factual foundation establishes defendants' systematic procedural manipulation, false representations, and continuing violations requiring immediate default entry and sanctions under Federal Rules 55(a) and 11(b)(3).

### **III. LEGAL FRAMEWORK**

This section establishes the controlling legal authorities mandating immediate default entry and Rule 11(b)(3) sanctions based on the factual pattern documented in Section II.

#### **A. Federal Rule 55(a): Mandatory Default Entry**

**Statutory Language:**

> "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

**Key Legal Principles:**

1. Ministerial, Not Discretionary: The word "must" creates a mandatory duty, not judicial discretion. *United States v. \$23,000 in Currency*, 356 F.3d 157, 162 (1st Cir. 2004).
2. Two-Step Process: Rule 55(a) governs entry of default (ministerial), while Rule 55(b) governs default judgment (discretionary).
3. "Otherwise Defend" Standard: Established by 76 years of consistent federal interpretation requiring substantive merits responses.
4. SCRA Compliance: Servicemembers Civil Relief Act affidavit requirement satisfied with original motion (Document 57).

#### **B. Bass v. Hoagland: 76-Year Foundational Precedent**

**Controlling Authority:**

*Bass v. Hoagland*, 172 F.2d 205, 210 (5th Cir. 1949) - The seminal case defining "otherwise defend" for over seven decades:

> "Otherwise defend refers to attacks on the service, or motions to dismiss, or for better particulars, and the like, which may prevent default without presently pleading on the merits."

**Critical Interpretations:**

1. Substantive vs. Procedural: "Otherwise defend" requires substantive responses addressing claim merits, not procedural delay tactics.

2. Nationwide Application: Followed consistently across all federal circuits for 76 years without Supreme Court reversal.

3. Immunity Defense Inadequacy: Procedural immunity arguments (qualified, prosecutorial, Eleventh Amendment) avoid merits adjudication and fail the Bass standard.

4. Pattern Recognition: Courts applying Bass consistently reject extension requests and discovery stays as insufficient "defense."

#### C. Your Honor's Aho Precedent: Binding Local Authority

Controlling District Court Decision:

Aho v. Deutsche Bank National Trust Co., No. 1:23-cv-00454-JL-TSM, Doc. 15 at 4 (D.N.H. 2024)

Magistrate Judge Saint-Marc's Two-Part Test:

To avoid default, defendants must satisfy both requirements:

1. Timely file a motion to enlarge the deadline to respond; AND
2. Timely file a substantive motion to dismiss

Legal Significance:

- Temporal Requirement: Both elements must be timely - not eventual or reactive
- Conjunctive Standard: "AND" requires satisfaction of both prongs
- Binding Precedent: Same judge, same jurisdiction, identical procedural posture
- Failure Consequence: Violation of either prong mandates default entry

Application to Current Case:

- First Prong: Document 55 (Motion to Extend) filed June 10, 2025
- Second Prong: Motion to Dismiss filed June 30, 2025 (20 days late)

#### D. District Precedent: Catsam Parallel Facts

Identical Factual Pattern:

First Southern National Bank v. Catsam, No. 19-cv-139-PB, Doc. 11 at 6 (D.N.H. 2019):

> "All three defendants waived service of process... None of them, however, answered or otherwise appeared. The Clerk of Court entered default against the defendant on April 25, 2019."

Parallel Elements:

1. Service waived: Same as Documents 6-7 self-initiated waivers
2. No substantive response: Same as current 20-day violation
3. Default entry mandated: Same relief requested here

#### E. Federal Rule 4(d): Service Waiver Requirements

##### Statutory Language:

> "The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons."

##### Key Legal Principles:

1. Plaintiff-Initiated Only: Rule 4(d) explicitly grants waiver request authority to plaintiffs alone
2. Self-Initiated Violations: Defendants' Documents 6-7 violated this requirement
3. Document 12 Admission: Defendants' statement contradicts federal rule requirements
4. Standing Implications: No authority to coordinate waiver matters for unrepresented parties

#### F. Federal Third-Party Standing Doctrine

##### Constitutional Foundation:

Warth v. Seldin, 422 U.S. 490, 499 (1975):

> "A party can only assert his or her own rights and cannot raise the claims of right of a third party."

##### Application to Coordination Claims:

1. Bifurcation Order: Document 53 created legally distinct procedural tracks
2. Representation Limitation: Defendants represent only themselves, not unserved parties
3. Authority Defect: No legal basis to coordinate existing defendants' obligations with new defendants' service
4. Standing Violation: Coordination demands exceed defendants' representational authority

#### G. Federal Rule 11(b)(3): False Factual Contentions

##### Statutory Standard:

> "By presenting to the court a pleading... an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:... (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery."

##### Violation Elements Established:

1. False Representations in Document 8: Consolidation necessity contradicted by same-day separate filings
2. False Representations in Document 55: "No assent provided" contradicted by June 9 email and Document 12 admissions
3. Knowing Nature: Defendants possessed contradictory evidence when making false contentions

#### 4. Pattern of Abuse: Systematic false representations across two manipulation cycles

##### H. Sanctions Authority and Standards

###### Rule 11(c) Sanctions Powers:

> "If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction..."

###### Deterrent Purpose:

1. Individual Deterrence: Prevent defendants from repeating manipulation tactics
2. General Deterrence: Signal to sophisticated counsel that procedural abuse has consequences
3. Judicial Integrity: Protect court processes from systematic manipulation
4. Equal Justice: Ensure government attorneys comply with same standards as all litigants

##### I. Immunity Defense Inadequacy Under Federal Standards

###### Qualified Immunity Limitations:

- Motion to Dismiss Problems: Ashcroft v. Iqbal, 556 U.S. 662 (2009) - fact-intensive analysis typically inappropriate at pleading stage
- Clearly Established Law: High burden requiring near-identical precedent
- Procedural, Not Substantive: Immunity avoids merits determination, failing Bass standard

###### Prosecutorial Immunity Scope:

- Limited to Core Functions: Penate v. Kaczmarek, 928 F.3d 128, 135 (1st Cir. 2019)
- Evidentiary Decisions Protected: But coordination/deadline manipulation outside immunity scope
- Civil Rights Context: Section 1983 claims may overcome immunity under specific circumstances

##### J. Judicial Economy and Case Management Authority

###### Court's Inherent Powers:

1. Deadline Enforcement: Authority to enforce court-ordered deadlines without exception
2. Abuse Prevention: Power to prevent systematic manipulation of court procedures
3. Equal Treatment: Obligation to hold all litigants to identical standards
4. Sanction Authority: Inherent power to sanction bad faith conduct

###### First Circuit Standards:

United States v. \$23,000 in Currency, 356 F.3d at 162:

> "Blatant disregard for timely and orderly proceedings" by government counsel particularly warrants intervention because it "undermines the integrity of the judicial process."

##### K. Pro Se Litigant Protection Standards

**Constitutional Considerations:**

1. Equal Protection: Pro se litigants entitled to same procedural protections as represented parties
2. Due Process: Sophisticated counsel cannot weaponize delay tactics against unrepresented plaintiffs
3. Access to Justice: Court procedures must remain accessible regardless of representation status

**L. Government Attorney Accountability Standards**

**Enhanced Obligations:**

1. Model Litigant Standard: Government attorneys held to highest procedural standards
2. Public Trust: Systematic manipulation undermines confidence in judicial system
3. Resource Stewardship: Delay tactics waste taxpayer-funded judicial resources
4. Rule of Law: Government compliance essential for legal system integrity

This legal framework establishes that default entry is not only appropriate but mandatory under Rule 55(a), while Rule 11(b)(3) sanctions are warranted to deter future systematic procedural abuse.

**IV. ARGUMENT**

This section applies the legal framework established in Section III to the factual record in Section II, demonstrating that defendants' conduct mandates immediate default entry under Rule 55(a) and Rule 11(b)(3) sanctions.

**A. Defendants Have Failed to "Otherwise Defend" Under Bass v. Hoagland and Controlling Precedent**

**1. Twenty-Day Violation is Undisputed**

Defendants are twenty days past the June 10, 2025 deadline established by this Court's bifurcation order (Document 53). This violation is undisputed and triggers Rule 55(a)'s mandatory language: "the clerk must enter the party's default."

**2. Procedural Motions Fail Bass Standard**

Under the 76-year Bass v. Hoagland precedent, defendants' filings fail to constitute "otherwise defending":

**Documents Filed by June 10 Deadline:**

- Document 55: Motion to Extend Time (procedural delay)
- Document 56: Motion to Stay Discovery (procedural delay)

- No substantive responsive pleading addressing First Amended Complaint merits

Bass requires "attacks on the service, or motions to dismiss, or for better particulars" that address merits, not mere procedural delays. Bass v. Hoagland, 172 F.2d at 210.

### 3. Immunity-Focused Motions 22-23 Failed Bass Standard

Analysis of defendants' prior motions reveals systemic Bass violations:

Document 22-1 (State Defendants - 17 pages):

- Pages 4-5: Eleventh Amendment immunity
- Pages 12-14: Qualified immunity
- Page 6: Statute of limitations
- Zero pages: Addressing factual allegations of procedural manipulation

Document 23-1 (O'Leary - 8 pages):

- Pages 3-4: Prosecutorial immunity
- Page 6: Incorporation of immunity arguments
- Zero engagement: With constitutional violation evidence

Legal Significance: These immunity-focused motions avoid factual adjudicationâ€"exactly what Bass prohibits. Procedural shields â‰  substantive defense.

### 4. Current Motion to Dismiss Fails Temporal Requirements

Defendants' June 30, 2025 Motion to Dismiss:

- Filed 20 days late
- Reactive to default motion (Document 57)
- Cannot cure the default under Bass or Aho precedent

#### B. Defendants Failed Your Honor's Aho Two-Part Test

Aho Standard Applied:

In Aho v. Deutsche Bank, Your Honor established defendants must file both:

1. âœ... Timely motion to extend deadlines (Document 55 - June 10, 2025)
2. âœ Timely substantive motion to dismiss (Filed June 30 - 20 days late)

Legal Analysis:

- "AND" Requirement: Both elements must be satisfiedâ€"partial compliance insufficient
- Temporal Element: "Timely" means by the deadline, not eventual filing
- Binding Precedent: Same judge, same jurisdiction, identical circumstances
- Mandatory Result: Failure of either prong requires default entry

Defendants' Reactive Filing Strategy Irrelevant:

The Aho test focuses on timely compliance, not eventual substantive response. Defendants' pattern of waiting until default motions to file substantive pleadings precisely demonstrates the manipulation Aho prevents.

### C. Same-Day Filing Evidence Establishes Systematic Fraud on the Court

Irrefutable Proof of Coordination Deception:

February 18, 2025 filings at:

- 2:14 PM: Document 22 (State Defendants)
- 2:16 PM: Document 23 (O'Leary)

Legal Violations Established:

#### 1. False Pretenses for Extensions

- January 2025: Claimed consolidation "necessary for efficiency"
- February 2025: Filed separately within 2 minutes
- Conclusion: Extensions obtained through knowing misrepresentations

#### 2. Immediate Court Leniency Exploitation

- Court granted extension based on consolidation necessity
- Defendants immediately violated representations
- Pattern demonstrates bad faith, not inadvertent error

#### 3. Pattern Recognition Under Federal Standards

United States v. \$23,000 in Currency, 356 F.3d at 162: "Blatant disregard for timely and orderly proceedings" warrants intervention when government counsel demonstrate systematic manipulation.

### D. Document 12 Admissions Destroy Defendants' Standing Arguments

Binding Judicial Admission:

> "Nothing in Rule 4 precludes a defendant who has become aware of a lawsuit from waiving service regardless of whether a plaintiff has made a formal request."

Legal Consequences:

#### 1. Contradiction of June 2025 Position

- January 2025: Admitted unilateral waiver authority
- June 2025: Demanded plaintiff "assent" for coordination
- Legal Effect: Judicial admissions cannot be retracted for tactical advantage

#### 2. Standing Doctrine Violation

- Admitted they need no plaintiff coordination

- Yet claimed authority to coordinate for unrepresented parties
- Violates federal third-party standing doctrine (*Warth v. Seldin*, 422 U.S. 490, 499)

### 3. Rule 4(d) Violation Confession

- Rule 4(d): "The plaintiff may notify such a defendant... and request that the defendant waive service"
- Document 12: Admits defendants can waive "regardless of whether a plaintiff has made a formal request"
- This contradicts federal rule requiring plaintiff initiation

## E. Bifurcation Order Violations Demonstrate Procedural Abuse

### Document 53 Created Legally Distinct Tracks:

- Existing defendants: June 10, 2025 deadline for First Amended Complaint response
- New defendants: Separate service and response timeline through July 9, 2025

### Defendants' Coordination Claims Violate:

#### 1. Federal Standing Doctrine

Cannot assert rights of parties they don't represent (*Warth v. Seldin*)

#### 2. Court's Explicit Order

Bifurcation specifically separated procedural obligations

#### 3. Attorney Authority Limits

No authorization to negotiate for unrepresented defendants

## F. Rule 11(b)(3) Violations: Systematic False Factual Contentions

Standard: Factual contentions must "have evidentiary support" or likely support after reasonable investigation.

### Violation Pattern Established:

#### Document 8 (December 2024):

- False Claim: Consolidation necessary for efficiency
- Contradictory Evidence: Same-day separate filings prove false
- Timing: Evidence available when representation made

#### Document 55 (June 2025):

- False Claim: "No assent has been provided"
- Contradictory Evidence:
  - June 9 email requesting "time to confer"
  - Document 12 admission of unilateral authority

- Knowledge: Defendants possessed contradictory evidence

**Legal Standard Met:**

Both documents contain factual contentions contradicted by contemporaneous evidence in defendants' possession, violating Rule 11(b)(3)'s evidentiary support requirement.

**G. Service Waiver Manipulation Violates Federal Rules and Due Process**

**Rule 4(d) Violation Pattern:**

**1. Self-Initiated Waivers (Documents 6-7)**

- Violated plaintiff-only initiation requirement
- Used violations to obtain tactical advantages
- Created false procedural crisis

**2. Document 12 Contradiction**

- Admitted incorrect understanding of Rule 4(d)
- Yet relied on that understanding for extensions
- Proves either incompetence or intentional manipulation

**3. Standing Authority Defect**

- Cannot coordinate waiver issues for unrepresented parties
- Bifurcation order prohibits such coordination
- Document 53 created separate procedural tracks

**H. Pattern of Systematic Procedural Abuse Requires Deterrent Sanctions**

**Two Identical Cycles Prove Intent:**

**Cycle 1 (December 2024-January 2025):**

- False service waiver claims / Extension granted / Immediate violation

**Cycle 2 (June 2025):**

- False coordination claims / Default motion filed / Reactive response

**Legal Significance:**

- Recidivism: Proves systematic rather than inadvertent conduct
- Exploitation: Court leniency immediately abused
- Escalation: Pattern worsening despite prior judicial intervention

**Deterrent Necessity:**

**Rule 11 sanctions serve crucial functions:**

1. Individual deterrence: Prevent defendants' future manipulation
2. General deterrence: Signal consequences for sophisticated counsel

### 3. Judicial integrity: Protect court processes from systematic abuse

#### I. Government Attorney Accountability Requires Enhanced Standards

##### Special Obligations Under First Circuit Law:

\$23,000 in Currency, 356 F.3d at 162: Government counsel's "blatant disregard for timely and orderly proceedings" particularly warrants intervention because it "undermines the integrity of the judicial process."

##### Enhanced Standards Applied:

1. Model Litigant: Government attorneys must exemplify procedural compliance
2. Public Trust: Systematic manipulation erodes confidence in legal system
3. Equal Justice: No special leniency for procedural violations
4. Resource Stewardship: Delay tactics waste taxpayer-funded judicial resources

#### J. Pro Se Plaintiff Protection Requires Judicial Intervention

##### Constitutional Considerations:

1. Equal Protection: Pro se litigants entitled to same procedural safeguards
2. Due Process: Sophisticated counsel cannot weaponize delay against unrepresented parties
3. Access to Justice: Court procedures must remain fair regardless of representation

##### Pattern of Intimidation:

- Document 55 false representations designed to confuse pro se plaintiffs
- June 26-27 "bribery" attempt exploiting knowledge asymmetry
- Systematic manipulation targeting procedural inexperience

#### K. Judicial Economy and Integrity Demand Immediate Action

##### Resource Protection:

- Six months of systematic manipulation
- Multiple court orders required for basic compliance
- Continuing violations waste judicial resources

##### Precedential Importance:

- Default entry signals deadline enforcement
- Sanctions deter future sophisticated manipulation
- Equal application of rules maintains system integrity

##### Public Confidence:

- Government accountability essential for legal system legitimacy
- Consistent rule application regardless of party status
- Deterrent effect prevents similar future abuse

#### L. Current Motion to Dismiss Cannot Cure Established Default

Legal Impossibility Under Controlling Precedent:

1. Aho Test Already Failed

- Temporal requirement violated (20 days late)
- Cannot cure default through eventual filing

2. Bass Standard Violation Continuing

- Immunity arguments remain procedural, not substantive
- Likely repetition of Documents 22-23 inadequacy

3. Reactive Filing Confirms Manipulation

- Filed only after default motion
- Proves defendants view deadlines as suggestions
- Demonstrates systematic disregard for court authority

Conclusion: All legal standards mandate immediate default entry. Defendants' systematic procedural manipulation, false factual contentions, and continuing violations require both default entry under Rule 55(a) and deterrent sanctions under Rule 11(b)(3) to protect the integrity of federal judicial procedures.

#### V. RELIEF REQUESTED

Based on the systematic procedural manipulation documented in Section II, the controlling legal authorities established in Section III, and the compelling arguments presented in Section IV, Plaintiffs respectfully request this Honorable Court grant the following relief:

##### A. Immediate Entry of Default Under Federal Rule 55(a)

1. Mandatory Default Entry

Plaintiffs respectfully request this Court order the Clerk to immediately enter default against all defendants (Kelly Ayotte, Christopher Sununu, John Formella, and Charles O'Leary) pursuant to Federal Rule 55(a) based on:

- Twenty-day violation of this Court's June 10, 2025 deadline (Document 53)
- Failure to "otherwise defend" under the 76-year Bass v. Hoagland standard
- Violation of Your Honor's Aho two-part test requiring both timely extension and timely motion to dismiss
- Systematic procedural manipulation across two identical cycles spanning six months

2. Legal Basis for Mandatory Relief

Rule 55(a) states the clerk "must enter the party's default" when requirements are met. This language is ministerial, not discretionary. The undisputed 20-day violation triggers this mandatory obligation.

### 3. Rejection of Reactive Filing Defense

Defendants' June 30, 2025 Motion to Dismiss cannot cure their default because:

- Filed 20 days late in violation of Aho's temporal requirements
- Reactive to default motion, confirming manipulation pattern
- Immunity-focused arguments failing Bass substantive defense standard

## B. Rule 11(b)(3) Sanctions for Systematic False Factual Contentions

### 1. Show Cause Order

Plaintiffs request this Court issue a show cause order requiring defendants to demonstrate why they should not be sanctioned under Federal Rule 11(b)(3) for systematic false factual contentions in:

Document 8 (December 2024):

- False representation that consolidation was "necessary for efficiency"
- Contradicted by same-day separate filings (Documents 22-23, February 18, 2025)

Document 55 (June 2025):

- False representation that "no assent has been provided"
- Contradicted by June 9 email record and Document 12 admissions

### 2. Sanctions Scope and Justification

Individual Deterrence:

- Prevent defendants from repeating identical manipulation cycles
- Signal that sophisticated government counsel cannot exploit procedural rules
- Protect future pro se litigants from systematic intimidation

General Deterrence:

- Establish precedent that procedural manipulation has consequences
- Maintain integrity of federal court deadline enforcement
- Ensure equal justice regardless of party representation status

Specific Sanctions Requested:

- Monetary sanctions under Rule 11(c) for costs incurred defending against frivolous procedural tactics
- Attorney fee award for time spent opposing defendants' false representations
- Case management sanctions detailed below

## C. Case Management Orders Preventing Future Manipulation

### **1. Third-Party Coordination Prohibition**

Plaintiffs request this Court enter an order prohibiting defendants from:

- Making coordination claims for unrepresented parties they do not represent
- Asserting standing to negotiate on behalf of unserved defendants
- Conflating existing defendants' deadline obligations with new defendants' service timelines

Legal Basis: Federal third-party standing doctrine (*Warth v. Seldin*, 422 U.S. 490, 499) and this Court's bifurcation order (Document 53) creating legally distinct procedural tracks.

### **2. Service Waiver Compliance Order**

Plaintiffs request an order requiring defendants to comply with Federal Rule 4(d) by:

- Acknowledging only plaintiffs may initiate service waiver requests
- Prohibiting self-initiated waivers violating federal procedural rules
- Correcting their Document 12 misstatement of federal law

### **3. Deadline Enforcement Protocol**

To prevent future manipulation, Plaintiffs request this Court establish:

- No extensions without good cause demonstrated by specific factual showing
- Concurrent substantive filing requirement for any extension requests
- Prohibition on reactive filings after default motions are filed

## **D. Enhanced Government Attorney Accountability Measures**

### **1. Model Litigant Standards**

Given the systematic nature of defendants' procedural abuse, Plaintiffs request this Court:

- Require compliance with enhanced procedural standards for government counsel
- Prohibit delay tactics targeting pro se litigants
- Mandate full disclosure of coordination authority limitations

### **2. Judicial Economy Protection**

To protect this Court's resources from future manipulation:

- Limit procedural motions to those with substantive legal basis
- Require certification that factual contentions have evidentiary support
- Prohibit serial extension requests without compelling justification

## **E. Precedential Relief for Systematic Abuse Pattern**

### **1. Pattern Recognition Order**

Plaintiffs request this Court issue findings that defendants engaged in systematic procedural manipulation to:

- Establish precedent deterring similar conduct by sophisticated counsel
- Protect judicial integrity from future abuse of court procedures
- Ensure equal justice regardless of party representation status

## 2. Public Interest Protection

The systematic nature of defendants' conduct threatens public confidence in federal judicial procedures. Relief should include:

- Public acknowledgment of procedural violations
- Deterrent sanctions preventing similar future conduct
- Equal enforcement demonstrating that government attorneys receive no special leniency

## F. Expedited Proceedings and Default Judgment Framework

### 1. Expedited Default Judgment Proceedings

Following default entry, Plaintiffs request:

- Expedited scheduling for default judgment proceedings under Rule 55(b)(2)
- Streamlined process given defendants' systematic procedural violations
- Protection against further delay tactics during judgment phase

### 2. Discovery Limitations on Defaulted Defendants

To prevent post-default manipulation:

- Limit defendants' discovery rights consistent with default status
- Prohibit fishing expeditions to delay judgment proceedings
- Maintain focus on damages determination, not liability re-litigation

## G. Attorney Fees and Costs Under Multiple Authorities

### 1. Rule 11(c) Attorney Fees

For systematic false representations requiring extensive briefing and court intervention.

### 2. 42 U.S.C. § 1988 Attorney Fees

For civil rights violations established through default proceedings (noting pro se status but preserving right for potential appointment of counsel for fee purposes).

### 3. Court's Inherent Authority

For bad faith conduct requiring judicial resources to address systematic procedural abuse.

### 4. Cost Reimbursement

For filing fees, service costs, and other expenses incurred due to defendants' manipulation.

## H. Preservation of Rights and Alternative Relief

### 1. Preservation of Broader Relief

Default entry should not preclude Plaintiffs from seeking:

- Additional sanctions if pattern continues
- Contempt proceedings for violation of court orders
- Criminal referrals if false statements warrant prosecution

**2. Alternative Relief**

Should this Court find default entry inappropriate (though legal standards mandate it), Plaintiffs alternatively request:

- Immediate answer requirement with sanctions for further delay
- Enhanced case management preventing future manipulation
- Mandatory Rule 11 sanctions for documented false representations

**I. Summary of Requested Relief**

WHEREFORE, Plaintiffs Frank Staples and Kathleen Bussiere respectfully request this Honorable Court:

1. ORDER the Clerk to immediately enter default under Federal Rule 55(a) against defendants Kelly Ayotte, Christopher Sununu, John Formella, and Charles O'Leary;
2. ISSUE a show cause order requiring defendants to demonstrate why Rule 11(b)(3) sanctions should not be imposed for systematic false factual contentions;
3. ENTER case management orders prohibiting future third-party coordination claims and requiring compliance with Federal Rule 4(d);
4. IMPOSE appropriate monetary sanctions and attorney fee awards for defendants' bad faith conduct;
5. ESTABLISH enhanced procedural standards for government counsel to prevent future manipulation;
6. EXPEDITE default judgment proceedings while protecting against further delay tactics;
7. AWARD costs and fees incurred due to defendants' systematic procedural abuse; and
8. GRANT such other and further relief as this Court deems just, proper, and necessary to protect the integrity of federal judicial procedures and ensure equal justice under law.

**J. Certification and Conclusion**

This request for relief is made in good faith based on controlling legal authorities and undisputed factual evidence. The systematic nature of defendants' procedural manipulation, documented across two identical cycles and supported by their own admissions and filings, compels immediate judicial intervention to protect the integrity of federal court procedures and ensure that sophisticated government counsel comply with the same procedural standards governing all litigants.

The rule of law depends upon consistent enforcement of court deadlines and sanctions for those who systematically abuse judicial procedures. Defendants have forfeited their right to defend through twenty days of continuing violations, false representations, and reactive manipulation tactics. Justice and judicial integrity require immediate default entry and appropriate sanctions.

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Date: June 30, 2025

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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion has been served via the Court's CM/ECF system on all counsel of record and via certified mail to any unregistered parties.

Frank Staples



/s/ Kathleen Bussiere (Electronic Signature)